

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| IN THE MATTER OF THE | § |
| PETITION OF JOHN STEVEN | § No. 37, 2011 |
| LANE, III, FOR A WRIT OF | § |
| MANDAMUS | § |

Submitted: February 11, 2011

Decided: March 4, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 4th day of March 2011, it appears to the Court that:

(1) The petitioner, John Steven Lane, III, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to clarify its sentencing orders dated August 11 and August 13, 2011. The State of Delaware has filed an answer requesting that Lane's petition be dismissed. We find that Lane's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record before us reflects that, in April 2008, Lane pleaded guilty to Burglary in the Second Degree. He was sentenced to 5 years of Level V incarceration, to be suspended after 1 year in the Greentree Program for 2 years at Level IV Crest, to be suspended in turn following successful

¹ Del. Const. art. IV, §11(6); Supr. Ct. R. 43.

completion of the program for 1 year, 6 months at Level III Crest Aftercare. Lane did not file a direct appeal of his conviction, but instead filed several unsuccessful motions for sentence modification.

(3) On August 11, 2010, Lane was found to have committed a violation of probation (“VOP”). His probation was revoked and he was sentenced to 3 years at Level V, to be suspended after 2 years and successful completion of the Key Program for 6 months at Level IV Crest, to be followed by 18 months at Level III Crest Aftercare. On August 13, 2010, the Superior Court amended its August 11, 2010 sentencing order, explaining in the notes that Lane was to complete 2 years at Level V and successfully complete the Key Program before being placed on “probation.” Lane did not file a direct appeal from his VOP sentence. Instead, he filed a motion for sentence modification, which the Superior Court denied.

(4) In his petition for a writ of mandamus, Lane requests this Court to order the Superior Court to clarify whether the Superior Court intended him to be placed at Level IV or Level III after the completion of his Level V time.

(5) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² As a condition precedent to

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

the issuance of the writ, the defendant must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.³

(6) There is no basis for the issuance of a writ of mandamus in this case. Lane has not demonstrated that he has a clear right to the performance of a duty on the part of the Superior Court, which it has arbitrarily failed or refused to perform. Moreover, Lane could have appealed from the Superior Court's sentencing order, but chose not to do so.⁴ Therefore, Lane's petition for a writ of mandamus must be dismissed.

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ Id.

⁴ We note that the August 11, 2010 sentencing order clearly states that Lane will serve time at Level IV after completing his Level V sentence.